

EXHIBIT C

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Attorneys for Plaintiff

Bestway Inflatables & Material Corp.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BESTWAY INFLATABLES & MATERIAL
CORP.,

Plaintiff,

v.

JOHN/JANE DOE 1-10,

Defendants.

CASE NO.: 3:21-cv-05119-PJH

**DECLARATION OF PATRIZIO
FUMAGALLI**

I, Patrizio Fumagalli, pursuant to 28 U.S.C. § 1746, declare and state as follows:

1. I have been employed by various Bestway entities for almost twenty years. I am currently the Chief Strategic Officer of Bestway (USA), Inc. I have held this position since January 2017. Prior to that, I was Chief Executive Officer (CEO) of Bestway (USA), Inc. from the end of 2013 until the end of 2016. I was Global Developer for Bestway (Hong Kong) International, Ltd. from January 2013 until the end of 2013. From 1999 to 2012, I was CEO of Bestway Europe SRL.

1 I have personal knowledge of the information below and am competent to testify as to the same if
2 called upon by this Court.

3 2. Bestway Inflatables & Material Corp.'s ("Bestway") products are sold throughout
4 the United States by Bestway (USA), Inc.

5 3. Bestway is a leading manufacturer and distributor of inflatable products.

6 4. For over 25 years, Bestway has manufactured and sold consumer products. Bestway
7 offers over 1,000 products in four primary product lines: above-ground pools and portable spas,
8 recreation products, sporting goods, and camping products. Bestway operates globally, including
9 all over the United States.


10 5. Bestway's products are available for purchase at many large retail stores, including
11 WalMart and Target.

12 6. Bestway's products are also available for purchase online.

13 7. Bestway's products are known to consumers throughout the United States to
14 represent genuine, high quality goods.

15 8. Bestway's strong reputation and goodwill in the industry is further bolstered by its
16 strong commitment to aiding users of Bestway products.

17 9. Bestway owns in excess of eighty (80) United States trademark registrations for a
18 variety of trademarks used in connection with Bestway's products, including those shown below.

- 19
- 20 •  U.S. Reg. No. 5994966)
 - 21 • Bestway (U.S. Reg. No. 5702452)
 - 22 • Bestway U.S. Reg. No. 2748177
 - 23 • H2O GO (U.S. Reg. No. 4741874)
- 24

25 10. Through a long period of usage by Bestway, the Bestway Brand is well-known and
26 famous to customers and potential customers. The Bestway trademarks serve as an indicator of
27 the origin and source of the goods sold and provided by Bestway.

28

1 11. On or around June 30, 2020, Bestway became aware of a counterfeit website that
2 was improperly using Bestway's intellectual property to deceive consumers into believing that
3 Bestway was sponsoring, affiliated, or otherwise associated with the website.

4 12. Specifically, one consumer posted to Bestway's social media:

5 There is a fraudulent website, bestway outlet. Im not sure if you are aware
6 of it. Intex had the same thing happen except it was intex outlet. A lot of
7 your legitimate customers are being scammed out of money thinking it's
8 really your online store. Just letting you and other consumers know to be
wary. The website looks legit until you notice the prices and the checkout
only allows PayPal. So be on the lookout for that.

9 13. Other consumers and potential consumers have also noticed the website and
10 reached out to Bestway with the belief that Bestway owns, is affiliated with, or otherwise controls
11 the website.

12 14. Defendants appear to be taking advantage of the high demand and low supply
13 relative to above-ground swimming pools caused by the COVID-19 pandemic.

14 15. Attached as Exhibit A to the Complaint (DKT No. 1) is a true and correct copy of
15 a list of Bestway's trademarks and examples of Defendants' infringement with those marks.

16 16. Upon information and belief, the only way to "purchase" one of the products from
17 the Infringing Sites is to use PayPal. Once a customer provides payment they will never receive
18 the good they purchased. The now unhappy consumer, believing that Bestway is associated with
19 the website, will demand a refund or otherwise seek the good from Bestway.

20 17. Bestway has been forced to deal with these fraudulent websites in the past and takes
21 the threat of these fraudulent and criminal websites seriously.

22 18. If allowed to continue the marketing and sale of its infringing products, Defendants
23 will cause Bestway serious and irreparable harm in the form of lost good will and reputation,
24 confusion of Bestway's and competing products, and loss of customer recognition of genuine
25 Bestway products.

1 I hereby declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 2nd day of July 2021.

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6 Patrizio Fumagalli
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